IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6820 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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LM DEVIPUTRA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6820 of 2001

MR DP VORA for Petitioner No. 1

MR HD DAVE, AGP for Respondent No. 1,3

MR MANISH J PATEL for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2002

ORAL JUDGEMENT

#. The petitioner is a retired employee, who has filed this petition to get his pensionary benefits. The petitioner was, initially, appointed as Khadi Sanyojak by order dated 25.7.1970. The said appointment was made under the Sarvoday Yojna, Sakabarkantha, which is sponsored and sanctioned by the State of Gujarat.

Subsequently, it seems that, by resolution dated 30.3.1981, the Government discontinued the said yojna and the petitioner was, subsequently, absorbed on ad hoc basis in the ex-cadre post in the District Panchayat, Sabarkantha. The petitioner was, accordingly, by office order dated 31.8.1981, absorbed as Khadi Sanyojak and was placed under Vijaynagar Taluka Panchayat. The aforesaid order is produced at page 21 - Annexure-A to the petition. In the said order, the name of the petitioner is appearing at serial No.7. In Clause (4) of the said order, it is provided that the said employees will not get any retiral benefits or the benefit of promotion. It seems that, on behalf of those employees, a representation was made against the aforesaid condition of not granting any retiral benefits to such employees. The petitioner, thereafter, had retired by way of superannuation, i.e. 31.3.1996. Ultimately, no retiral benefits were paid to the petitioner in view of condition No.4 incorporated in the earlier order, as mentioned above. It seems that the petitioner has also filed the appeal before the Gujarat Civil Services Tribunal for this very grievance, which is mentioned in para 9 of the petition, but in the meanwhile, the issue in question is already resolved by this Court in a group of petitions, i.e. Special Civil Application NO. 1696 of 1996 and other cognate matters. Ultimately, the petitioner has approached this Court by filing this petition.

#. It is argued by Mr.Vora that, by virtue of the Court's order in the aforesaid group of petitions, pensionary benefits are already given to the similarly situated employees like the petitioner, and, therefore, it is submitted that, there is no reason as to why the said benefit should not be given to the petitioner, who is retired since long and is deprived of his right of getting the pension, even though, the aforesaid point is concluded by this Court in the aforesaid group of petitions. Mr.Vora also submitted that, prior to his absorption in the Panchayat service, the petitioner had served for the period between 27.7.1970 and 1980 in the Sarvoday Yojna, and according to him, the petitioner is also entitled to get pension on the basis of the aforesaid service, which he had rendered in Sarvoday Yojna and whatever services, which he had rendered in the Panchayat, should also be counted for the purpose of pensionary benefits.

#. I have also heard Mr.H.D.Dave, learned AGP for the respondent nos. 1 and 3.

#. The first point, which is required to be considered

is, whether the services rendered by the petitioner before his absorption in the Panchayat service can be taken into account for the purpose of pensionary benefits. It is not in dispute that the petitioner was absorbed in the Panchayat service in 1981 and he superannuated in 1996. However, he has not been given any pensionary benefits by the department on the ground that he had completed less than 10 years' service and the said benefit cannot be made available to him. According to the department, services rendered by the petitioner between 1981 and 1987 were on ad hoc basis and he was absorbed in service from 1987 and considering the period between 1987 and 1996, the department found that the same is less than 10 years, and, therefore, the petitioner is not entitled to get the pensionary benefits.

#. It is required to be noted that, by the resolution dated 15.12.1987, which is at Annexure-B - page 27, a decision was taken to absorb all ex-cadre employees serving under the Sarvoday Yojna by allocating them to Panchayat service. The stand of the department, therefore, is that since the petitioner is absorbed in the Panchayat service from the year 1987 by the aforesaid Government Resolution dated 15.12.1987 and that absorption is from 1.4.1987, services rendered by the petitioner after the aforesaid period, are required to be taken into consideration for pensionary benefits.

#. The say of the petitioner is that, the earlier period of his service from 1981 to 1987, which he had rendered on temporary basis in the Panchayat, is also required to be taken into account irrespective of the condition in the original order at Annexure-A to the effect that, such employees will not be entitled to pensionary benefits.

#. Mr.Vora has relied upon the decision of this Court (Coram: C.K.Buch,J), in Special Civil Application No.1696 of 1996 and other cognate matters, dated 16.10.2001, wherein this Court has found that, when the benefit of pensionary right is made available, who were serving as teachers, the same benefit is required to be given to the employees, who are also recruited in the Panchayat service in 1980-1981, as the case may be. This Court, ultimately, allowed the said petitions and the Government Resolution dated 15.12.1987 was quashed and set aside. This Court has also directed the State Government to consider the services put by these employees prior to their absorption in the Panchayat service in 1980-1981 upto their age of superannuation for pensionary benefits and even earlier part of service before absorption may also be considered as "continuous

service".

#. Since the issue is accordingly covered by the aforesaid judgment, this petition will have to be allowed and it is held that the petitioner is entitled to pensionary benefits and for that purpose, his services from 1980-1981, till he retired by way of superannuation, should be treated as "continuous service". By taking into account the aforesaid period, the pension of the petitioner should accordingly be fixed at the earliest.

#. Mr.Vora also submitted that, since between 1970 and 1980, the petitioner was in Sarvoday Yojna, which was also a Government scheme, that period should also be considered for giving the pensionary benefits to the petitioner. He further submitted that, even under the BCSR, there is a provision for condoning the break in service. However, so far as the aforesaid period between 1970 and 1980 is concerned, the petitioner is permitted to make appropriate representation to the State Government, requesting the authority to take into consideration the aforesaid period for the purpose of giving pensionary benefits to the petitioner. If any such representation is made, the State Government may dispose of the same in accordance with law, considering whether the aforesaid 10 years' service should be counted for the purpose of giving pensionary benefits to the petitioner and whether 10 years' service should be treated as "continuous service", for giving such benefits within a period of four months from the date of receipt of such representation. So far as the rest of the prayer is concerned, since it is covered by the judgment of this Court, as indicated above, this petition is allowed to the said extent by directing the respondents to calculate the pensionary benefits of the petitioner within a period of four months by treating the petitioner as in "continuous service" from 1981 upto the age of superannuation, i.e. 1996. The arrears, if any, which are required to be paid to the petitioner, may also be calculated and the same may be paid within the aforesaid period of four months from today, considering the fact that the petitioner had retired since long.

##. It will be open to the petitioner to make appropriate representation to the State Government for the purpose of counting the services rendered between 1970 and 1980 and the representation may be disposed of in accordance with law. In case, the decision is against the petitioner, it will be open to the petitioner to challenge the same before the appropriate forum in accordance with law. Rule is made absolute to the

aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)